

Assembly Bill No. 1670

Passed the Assembly September 11, 2007

Chief Clerk of the Assembly

Passed the Senate September 6, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17900, 17903, 17910, 17911, 17913, 17914, 17915, 17917, 17922, 17923, 17926, 17927, and 17929 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, Mendoza. Fictitious business name statements.

Existing law requires every person who regularly transacts business in California for profit under a fictitious business name to file and maintain a current fictitious business name statement. Existing law requires a fictitious business name statement to contain specified information, to be published in a newspaper of general circulation in the county in which the principal place of business of the registrant is located, except as specified, and to be signed as specified with the county clerk where the business is located. Existing law also requires a statement of abandonment of a fictitious name to include certain information. Existing law authorizes a county clerk to charge specified fees for filing a fictitious business name, supplying a certified copy of the statement to a registrant, or filing a statement of withdrawal, and authorizes a county clerk to destroy a fictitious business name statement 4 years after its expiration. Under existing law, a person who knowingly executes, files, or publishes a false statement under the provisions regulating fictitious business names is guilty of a crime.

This bill would revise the conditions under which a new fictitious business name must be filed, and would revise the content of a fictitious business form statement. The bill would revise the signature requirements for a registrant, including specifying signature requirements for a husband and wife or for domestic partners, and would allow a person to also file a fictitious business name statement in a county other than where the registrant's principal place of business is located, as specified. The bill would instead require the publication of a statement in a newspaper of general circulation in the county where the fictitious business name was filed or, under certain conditions, in an adjoining county to where the fictitious business name statement was filed. The bill would also require a statement of abandonment to include the file

number of the fictitious business name statement, and would revise the information required on a statement of abandonment.

This bill would make technical, clarifying changes with respect to the fees that the county clerk may charge for a certified copy of a statement, the filing of a fictitious business name, the filing of a statement of abandonment of use, or the filing of a statement of withdrawal and would allow the destruction of proof of publication of a statement and other references related to the fictitious business name at the same time as the clerk may destroy the statement of a fictitious business name. Because the bill would expand the crime of filing a false statement by revising the requirements for a statement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) (1) The purpose of this section is to protect those dealing with individuals or partnerships doing business under fictitious names, and it is not intended to confer any right or advantage on individuals or firms that fail to comply with the law. The filing of a fictitious business name certificate is designed to make available to the public the identities of persons doing business under the fictitious name.

(2) Nothing in this section shall be construed to impair or impede the rebuttable presumption described in Section 14411.

(b) As used in this chapter, “fictitious business name” means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners, as described in subdivision (c).

(2) In the case of a partnership or other association of persons, other than a limited partnership that has filed a certificate of limited partnership with the California Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code, a foreign

limited partnership that has filed an application for registration with the California Secretary of State pursuant to Section 15692 or 15909.02 of the Corporations Code, a registered limited liability partnership that has filed a registration pursuant to Section 15049 or 16953 of the Corporations Code, or a foreign limited liability partnership that has filed an application for registration pursuant to Section 15055 or 16959 of the Corporations Code, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners, as described in subdivision (c) and in Section 17901.

(3) In the case of a domestic or foreign corporation, any name other than the corporate name stated in its articles of incorporation filed with the California Secretary of State, in accordance with subdivision (a) of Section 17910.5.

(4) In the case of a limited partnership that has filed a certificate of limited partnership with the California Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code and in the case of a foreign limited partnership that has filed an application for registration with the California Secretary of State pursuant to Section 15692 or 15902.02 of the Corporations Code, any name other than the name of the limited partnership as on file with the California Secretary of State.

(5) In the case of a limited liability company, any name other than the name stated in its articles of organization and in the case of a foreign limited liability company that has filed an application for registration with the California Secretary of State pursuant to Section 17451 of the Corporations Code, any name other than the name of the limited liability company as on file with the California Secretary of State, in accordance with subdivision (b) of Section 17910.5.

(c) A name that suggests the existence of additional owners within the meaning of subdivision (b) is one that includes such words as “Company,” “& Company,” “& Son,” “& Sons,” “& Associates,” “Brothers,” and the like, but not words that merely describe the business being conducted.

SEC. 2. Section 17903 of the Business and Professions Code is amended to read:

17903. As used in this chapter, “registrant” means a person or entity who is filing or has filed a fictitious business name statement, and who is the legal owner of the business.

SEC. 3. Section 17910 of the Business and Professions Code is amended to read:

17910. Every person who regularly transacts business in this state for profit under a fictitious business name shall do all of the following:

(a) File a fictitious business name statement in accordance with this chapter not later than 40 days from the time the registrant commences to transact such business.

(b) File a new statement after any change in the facts, in accordance with subdivision (b) of Section 17920.

(c) File a new statement when refiling a fictitious business name statement.

SEC. 4. Section 17911 of the Business and Professions Code is amended to read:

17911. This chapter does not apply to a nonprofit corporation or association, including, but not limited to, organizations such as churches, labor unions, fraternal and charitable organizations, foundations, and similar organizations.

SEC. 5. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

* _____

at ** _____:

*** _____

This business is conducted by **** _____

The registrant commenced to transact business under the fictitious business name or names listed above on

***** _____

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

Signed _____

Statement filed with the County Clerk of _____ County on _____

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are husband and wife, insert the full name and residence address of both the husband and the wife. If the registrant is a general partnership, copartnership, joint venture,

limited liability partnership, or unincorporated association other than a partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) “an individual,” (ii) “a general partnership,” (iii) “a limited partnership,” (iv) “a limited liability company,” (v) “an unincorporated association other than a partnership,” (vi) “a corporation,” (vii) “a trust,” (viii) “copartners,” (ix) “husband and wife,” (x) “joint venture,” (xi) “state or local registered domestic partners,” or (xii) “a limited liability partnership.”

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, “Not applicable.”

(c) The registrant shall declare that all of the information in the statement is true and correct. A registrant who declares as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

SEC. 6. Section 17914 of the Business and Professions Code is amended to read:

17914. The statement shall be signed as follows:

- (a) If the registrant is an individual, by the individual.
- (b) If the registrants are husband and wife, by the husband or wife.

(c) If the registrant is a general partnership, limited partnership, limited liability partnership, copartnership, joint venture, or unincorporated association other than a partnership, by a general partner.

(d) If the registrant is a limited liability company, by a manager or officer.

(e) If the registrant is a trust, by a trustee.

(f) If the registrant is a corporation, by an officer.

(g) If the registrant is a state or local registered domestic partnership, by one of the domestic partners.

SEC. 7. Section 17915 of the Business and Professions Code is amended to read:

17915. The fictitious business name statement shall be filed with the clerk of the county in which the registrant has his or her principal place of business in this state or, if the registrant has no place of business in this state, with the Clerk of Sacramento County. Nothing in this chapter shall preclude a person from filing a fictitious business name statement in a county other than that where the principal place of business is located, as long as the requirements of this subdivision are also met.

SEC. 8. Section 17917 of the Business and Professions Code is amended to read:

17917. (a) Within 30 days after a fictitious business name statement has been filed pursuant to this chapter, the registrant shall cause a statement in the form prescribed by subdivision (a) of Section 17913 to be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation in the county where the fictitious business name statement was filed or, if there is no such newspaper in that county, in a newspaper of general circulation in an adjoining county. If the registrant does not have a place of business in this state, the notice shall be published in a newspaper of general circulation in Sacramento County.

(b) Subject to the requirements of subdivision (a), the newspaper selected for the publication of the statement should be one that circulates in the area where the business is to be conducted.

(c) If a refiling is required because the prior statement has expired, the refiling need not be published unless there has been a change in the information required in the expired statement,

provided the refiling is filed within 40 days of the date the statement expired.

(d) An affidavit showing the publication of the statement shall be filed with the county clerk where the fictitious business name statement was filed within 30 days after the completion of the publication.

SEC. 9. Section 17922 of the Business and Professions Code is amended to read:

17922. (a) Upon ceasing to transact business in this state under a fictitious business name that was filed in the previous five years, a person who has filed a fictitious business name statement shall file a statement of abandonment of use of fictitious business name. The statement shall be executed in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county in which the person has filed his or her fictitious business name statement. The statement shall be published in the same manner as a fictitious business name statement and an affidavit showing its publication shall be filed with the county clerk after the completion of publication.

(b) The statement shall include:

(1) The name being abandoned and the street address of the principal place of business.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed, the file number, and the county where filed.

(3) In the case of an individual, the full name and residence address of the individual.

(4) In the case of a husband and wife, the full name and residence address of both the husband and the wife.

(5) In the case of a general partnership, a limited partnership, copartners, a limited liability partnership, a joint venture, or an unincorporated association other than a partnership, the full names and residence addresses of all of the general partners.

(6) In the case of a corporation, the name and address of the corporation as set forth in its articles of incorporation on file with the California Secretary of State.

(7) In the case of a trust, the full name and residence address of each of the trustees.

(8) In the case of a limited liability company, the name and address of the limited liability company as set forth in its articles of organization on file with the California Secretary of State.

(9) In the case of state or local registered domestic partners, the full name and residence address of each domestic partner.

SEC. 10. Section 17923 of the Business and Professions Code is amended to read:

17923. (a) Any person who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement shall be executed by the person filing the statement in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed, the file number, and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full names and residence addresses of the person or persons withdrawing as partners.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal meeting the requirements of this section.

SEC. 11. Section 17926 of the Business and Professions Code is amended to read:

17926. (a) As used in this section, “statement” means a fictitious business name statement, a statement of abandonment

of use of fictitious business name, or a statement of withdrawal from partnership operating under fictitious business name.

(b) For a fee of two dollars (\$2), the county clerk shall provide any person who so requests a certified copy of any statement on file in his or her office.

(c) A copy of a statement, when certified as provided in subdivision (b), establishes a rebuttable presumption of all of the following:

(1) The existence of the original statement.

(2) The execution of the statement by the person by whom it purports to have been executed.

(3) The truth of the information required by Sections 17913, 17922, or 17923 that is contained in the statement.

(d) The presumptions established by subdivision (c) are presumptions affecting the burden of producing evidence.

(e) All of the provisions of this section are subject to Section 54985 of the Government Code.

SEC. 12. Section 17927 of the Business and Professions Code is amended to read:

17927. (a) The county clerk shall mark each fictitious business name statement with a file number and the date of filing and shall retain the original statement for his or her file. He or she may destroy or otherwise dispose of the statement, including proof of publication and any other references related to the fictitious business name statement, four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name or statement of withdrawal from partnership operating under fictitious business name with a file number and the date of filing. He or she may destroy or otherwise dispose of the statement at the same time the fictitious business name statement to which it relates is destroyed pursuant to subdivision (a).

(c) In lieu of retaining the original statement on file, the county clerk may retain a copy of the statement in accordance with Section 26205.1 of the Government Code.

SEC. 13. Section 17929 of the Business and Professions Code is amended to read:

17929. (a) The fee for filing a fictitious business name statement is ten dollars (\$10) for the first fictitious business name and owner and two dollars (\$2) for each additional fictitious

business name or owner filed on the same statement and doing business at the same location. This fee covers the cost of filing and indexing the statement (and any affidavit of publication), furnishing one certified copy of the statement to the person filing the statement, and the cost for notifying registrants of the pending expiration of their fictitious business name statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, any affidavit of publication, and furnishing one certified copy of the statement to the person filing the statement.

(c) The fee for filing a statement of withdrawal from partnership operating under fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, any affidavit of publication, and furnishing one certified copy of the statement to the person filing the statement.

(d) All of the provisions of this section are subject to Section 54985 of the Government Code.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor